

HONORABLE JUDGE THOMAS O. RICE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

EDWIN TROY HAWKINS, a married
man,

Plaintiff,

vs.

DOUGLAS COUNTY, a municipal
corporation; CHELAN COUNTY, a
municipal corporation; DALE
ENGLAND; RANDY LAKE; BO
ALLEN; DEAN SCHLAMMAN; BILL
BLACK; and JOHN and JANE DOE
DEPUTIES NO. 3-8 of the
DOUGLAS COUNTY SHERIFF'S
DEPARTMENT; JOHN and JANE
DOES NO. 9 THROUGH 14
DEPUTIES of the CHELAN
COUNTY SHERIFF'S
DEPARTMENT; STEVEN M. CLEM
and JOHN DOES NO. 15 THROUGH
25, deputy prosecuting attorneys of the

Case No. 15-2-00283-TOR

DEFENDANT DOUGLAS
COUNTY'S REPLY
MEMORANDUM IN
SUPPORT OF SUMMARY
JUDGMENT

**WITHOUT ORAL
ARGUMENT ON FRIDAY
NOVEMBER 24, 2017 @ 6:30
p.m. WITH JUDGE RICE**

DEFENDANT DOUGLAS COUNTY'S REPLY
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT - page 1

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DOUGLAS COUNTY
PROSECUTOR'S OFFICE

Defendants.

II. PROCEDURAL HISTORY

Defendants timely filed a Motion for Summary Judgment on September 20, 2017. (*ECF Docs.* 51-53) On or about, October 2, 2017, Plaintiff's Counsel sent an email requesting Defendants stipulate to an extension so that he could complete the deposition of former Chelan County Sheriff, Mike Harum, prior to filing his response. Mike Harum is a previously undisclosed witness. Nonetheless, as a professional courtesy, Defense Counsel stipulated to that request. However, rather than scheduling a deposition, Plaintiff simply used the additional two weeks to obtain a Declaration of Mr. Harum. Thus, leaving Defendants with no ability to cross examine Mr. Harum. (*See ECF* 58)

Notwithstanding, and pursuant to the Stipulation entered into by the parties, Defendants, Douglas County et al, now make this timely reply.

LAW/ANALYSIS

A. Plaintiff failed to respond to Douglas Counties Motion for Dismissal.

Plaintiff briefly cites to the basic law of *Monell*, but does not address the limited means to a successful claim against an entity pursuant to 42 U.S.C. 1983.

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1 Plaintiff submitted a single page of the Douglas County Sheriff's Office
2 "Investigations," Policies and Procedures. (*See ECF 60-4*, p. 24.) Ostensibly to
3 establish a policy and procedure. Yet Plaintiff submitted no expert testimony to
4 state that that solitary policy is constitutionally invalid on its face, or that it was
5 even causally related to any constitutional deprivation. Plaintiff provided no
6 evidence of deficient training (or ratification). (*See ECF 57*, section B, p. 4-10;
7 *DSMF ECF 61*, *see also LR 7.1*) He provided no "pattern and practice."
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11 In fact, despite two prior Motions to Dismiss and several months in the
12 interim to complete written discovery and additional discovery depositions,
13 Plaintiff has not done so. Under CR 56(e) a responding party must establish facts
14 and may not rely on speculation.
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18 Plaintiff's claim against Douglas County must be dismissed as a matter of
19 law.
20

21 **B. Plaintiff Further Failed to Establish Any Claim For Federal**
22 **Malicious Prosecution**

23 Plaintiff wholly ignores any response to a claim for Federal Malicious
24 Prosecution. In fact, he does not reference his equal protection rights or other
25 "specific constitutional rights," at all in his response brief except to cite to a solitary
26 federal case, *Freeman v. City of Santa Ana*, 68 F.3d. 1180, 1189 (9th Cir. 1995)
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1 Yet he presented absolutely no evidence of any constitutional right being
2 violated. (or even what that right may be) Nonetheless, even under a claim for
3 federal malicious prosecution, probable cause is an absolute defense to malicious
4 prosecution. Once a law enforcement officer has a reasonable basis for believing
5 there is probable cause, he is not required to explore and eliminate every
6 theoretically plausible claim of innocence before making an arrest. *Baker v.*
7 *McCollan*, 443 U.S. 137, 145-46 (1979)
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11 In this case, at best, Plaintiff appears to make the argument that Douglas
12 County failed to follow up with one witness in particular, Gloria Bailey. Plaintiff
13 then goes on to argue that Bo Allen was “aware of the familial conflicts,” between
14 the Englands and Plaintiff. (*See ECF No. 57*, p. 14 and 15) However, as is
15 undisputed by Plaintiff, there were several Douglas County deputies, not just Bo
16 Allen, involved. None of the Douglas County Deputies had any personal
17 relationship with Mr. England, rather each of them “knew,” or “knew of,” Mr.
18 England because, at the time, he worked for Chelan County. Plaintiff presented no
19 evidence that this witness, Gloria Bailey, would have affected the outcome that
20 resulted in the filing of charges. He admits he has no evidence as to who placed
21 the equipment on his property and this is despite this alleged testimony of Gloria
22 Bailey. While he argues that the information came from her directly, this is not
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1 contained in the evidence; instead the information came from Plaintiff himself.
2
3 (*ECF* 60-6, p. 35) Further, while Deputy Allen is criticized, ten years later, for
4 failing to interview this particular witness, the information was available to the
5 prosecuting attorneys who also failed to take any action. (*See ECF* 60-6, p. 35)
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7 Recall also, Plaintiff failed to respond with any additional evidence his lack of
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9 proof of malice as set forth in Douglas County's opening Statement of Material
10 Facts. (*ECF* 52, p. 2-6) This is not enough to destroy the protection of probable
11
12 cause.

13 Finally, Plaintiff wholly failed to respond to Douglas County's assertions
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15 and evidence of an entire lack of malice, or ill-will.

16 As a matter of law, Plaintiff's claim for Federal Malicious Prosecution
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18 should be dismissed in its entirety against Douglas County, et al.

19 **C. For The Same Reasons, Plaintiff Failed To Establish State Malicious**
20 **Prosecution**

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22 As noted supra, Plaintiff argues that there was a want of probable cause
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24 because a solitary witness was not interviewed. In making this argument he fails
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26 to dispute the evidence in the record which establishes that Dale England, even if
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28 this court were to assume that Mr England was somehow involved in this
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30 investigation, that this establishes "ill will," or "hostility." Each of the Douglas

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1 County Deputies testified that they did not know Mr. England on a personal
 2 level. (*See ECF 52, DSMF 40, 44, 52, 53*) Plaintiff could provide no proof, and
 3 failed to counter Defendants' facts of his wild speculations of malice, or ill-will.
 4 (*ECF 52; DSMF 48, 50, 51, 54, 55, 58*). While Plaintiff makes much of a *Terry*
 5 Stop of a truck with a tractor by Deputy Schlaman, that person was released and
 6 nothing came of the stop – nor was it Plaintiff who was stopped. (*See Plaintiff's*
 7 *Brief, ECF 57, p. 14*) The stop of the vehicle was not of Plaintiff and it resulted
 8 in no charges against anyone, let alone him. (*See ECF 52; DSMF 38, 39*)
 9 Plaintiff also somehow attempts to argue that this neighboring witness, Gloria
 10 Bailey, somehow establishes “malice,” or “ill-will.” However, Plaintiff himself
 11 admits that he has no idea who placed the equipment on his property. (*See ECF,*
 12 *DSMF 32*)

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 19 Plaintiff has failed to establish even a question of fact as to a malicious
 20 prosecution. The fact that a later decision was made to abandon plaintiff's
 21 prosecution does not erase the fact that the prosecutor originally determined
 22 independently that there was probable cause to bring charges. *The Gehl Group*
 23 *v. Koby*, 63 F.3d 1528, 1536 (10th Cir. 1995); *Withrow v. Larkin*, 421 U.S. 35,
 24 57 (1975). It is Plaintiff's burden to rebut this presumption. *Newman v. County*
 25 *of Orange*, 457 F.3d 991, 993 (9th Cir. 2006)(internal citations omitted) There

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1 was no evidence produced from which, even taken in a light most favorable to
2 him, this Court can find that there is question of fact. As a matter of law, the
3 claim must be dismissed.
4

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6 **IV. CONCLUSION**

7 For the reasons stated above Douglas County Defendant's respectfully
8 request that Plaintiff's claims be dismissed.
9

10 DATED this 8th day of November, 2017.
11

12 EVANS, CRAVEN & LACKIE, P.S.
13

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of November, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF System, which will send notification of such filing to the following:

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